

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of I.M. and A.M., persons	)	(Not For Official Publication)
under eighteen years of age.	)	
_____	)	Case No. 20051055-CA
	)	
J.I.,	)	F I L E D
	)	(February 16, 2006)
Appellant,	)	
	)	2006 UT App 57
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, Salt Lake Department, 166584  
The Honorable Robert S. Yeates

Attorneys: Russell S. Pietryga, Salt Lake City, for Appellant  
Mark Shurtleff and John M. Peterson, Salt Lake City,  
for Appellee  
Martha Pierce and Tracy S. Mills, Salt Lake City,  
Guardians Ad Litem

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Before Judges Bench, Billings, and Thorne.

PER CURIAM:

J.I. challenges the sufficiency of the evidence to support the trial court's determination that her parental rights should be terminated. She claims that without references to her prior history, the July 20, 2005 incident does not support the termination of parental rights.

The juvenile court did not err in considering adjudicated facts from prior child welfare proceedings involving J.I. The State moved the court to take judicial notice of the two earlier cases. The court took judicial notice, without objection. "We review the juvenile court's judicial notice of prior adjudicated facts under Rule 201 of the Utah Rules of Evidence for abuse of discretion." In re J.B., 2002 UT App 267, ¶14, 53 P.3d 958. "[J]udicially noticed facts are conclusively established in civil actions for purposes of the fact finding process." Id. at ¶17. Because J.I. failed to make a timely objection to the propriety

of taking judicial notice, she cannot claim that the court improperly considered the adjudicated facts from prior cases. J.I. does not claim, and did not preserve a claim, that the juvenile court abused its discretion in taking judicial notice.

The facts concerning the first removal of I.M. are relevant. I.M. was removed the day after her birth, on September 24, 2002. Based upon J.I.'s successful completion of a service plan and dependency drug court, the court returned I.M. to her custody and terminated jurisdiction on March 3, 2004. J.I. was unable to maintain an appropriate level of parental care, which resulted in the removal of I.M. and A.M. fourteen months after termination of jurisdiction in the prior case. The 1999 case involving R.D. is relevant due to factual similarities between the circumstances that resulted in law enforcement taking J.I.'s children into protective custody on two separate occasions.

J.I. was unable to provide appropriate parental care on July 20, 2005. J.I.'s argument that this event cannot support termination because she was seriously ill and not "at fault" lacks merit. The relevant inquiry in this case was whether or not J.I. was a fit and competent parent. See Utah Code Ann. § 78-3a-407(1)(c) (Supp. 2005). The evidence, including judicially noticed facts, supports the findings of fact and conclusions of law on parental fitness.

J.I. challenges the sufficiency of the evidence supporting the best interest determination on two grounds. First, she contends the children were not in a stable placement. Although the children had been in their legal risk foster home less than two months, there is no basis in the record to support the assertion that the placement was not stable. The court found that the children had bonded with their legal risk parents and siblings, that the parents were committed to adoption if the children became available, that the parents were meeting the children's ongoing needs, and that the court had considered the factors enumerated in Utah Code sections 78-3a-409 and 78-3a-410. See Utah Code Ann. §§ 78-3a-409 and -410 (2002). These findings were supported by evidence of the children's specific needs upon removal and the efforts to address them.

J.I. also contends that "there was no evidence to support a best interest argument when the petition was filed." The State simultaneously filed the petition to terminate parental rights and a supporting motion to transfer custody on August 4, 2005. At the pretrial on August 15, the court set the termination petition for trial, without objection. Despite having made no objection, J.I. contends that the State did not possess evidence to support the petition on the date it was filed. To the extent that J.I. challenges the timing for seeking termination and

custody, she did not make a timely objection to preserve that issue. That sequence cannot be challenged under the guise of a challenge to the best interest determination.

We affirm the decision to terminate J.I.'s parental rights.

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Russell W. Bench,  
Presiding Judge

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge